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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2021/2022

UIP2612 – INTELLECTUAL PROPERTY LAW

(All Sections / Groups)

25 NOVEMBER 2021

Reading Time: 9.15 AM. – 9.30 A.M.
(15 minutes)

Answering Time: 9.30 A.M- 12.30 P.M
(3 hours)

INSTRUCTIONS TO STUDENT

1. Students will have fifteen minutes during which they may read the paper and make rough notes **ONLY** in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This question paper consists of three pages with **FIVE** Questions only.
3. Answer **TWO (2)** Question from Part A and answer **ALL** questions in Part B. All questions in the respective parts carry equal marks and the distribution of the marks for each question is given.
4. Students are allowed to bring into Examination Hall **CLEAN** and **ORIGINAL** copy of:
 - (i) Copyright Act 1987 (Act 332);
 - (ii) Patents Act 1983 (Act 291);
 - (iii) Industrial Designs Act 1996 (Act 552);
 - (iv) Trademarks Act 2019 (Act 815);
 - (v) Geographical Indications Act 2000 (Act 602)
5. Please write all your answers in the Answer Booklet provided.

PART A**CHOOSE TWO (2) QUESTIONS ONLY****QUESTION 1**

The development of trademark laws in Malaysia reached a significant milestone with the coming into force of the Trademarks Act 2019.

Discuss with reference to relevant statutory provisions and case law the grounds for refusal of registration of a Trademark.

(Total: 20 marks)

QUESTION 2

Discuss with reference to relevant statutory provisions and case law how the novelty requirement for patents is determined.

(Total: 20 marks)

QUESTION 3

“Where the Misrepresentation as to get-up is in issue, the nature of the group of consumers of the product is an important consideration in determining its character.”

Discuss.

(Total: 20 marks)

Continued...

PART B**ANSWER ALL QUESTIONS****QUESTION 4**

Delta Sdn Bhd. is a software development company in Malaysia. It develops software products for itself and for other businesses. Delta Sdn Bhd. develops and markets in its own name a Business Intelligence software called BI Plus. It also produces custom software for its clients such as Gamma Sdn Bhd.

Angelica, who worked as a user interface developer at Delta Sdn Bhd., left her employment two weeks ago to sell a competing Business Intelligence software called IntelliPro. IntelliPro was developed by Angelica after her working hours at home while she was still employed at Delta Sdn Bhd. IntelliPro contains most of the features found in BI Plus and some more. There is no evidence that Angelica had access to BI Pro's source code or that IntelliPro's source code was copied from BI Pro's source code. Also, IntelliPro was written in a programming language called Golang while BI Plus was written in the Java programming language.

The custom software developed by Delta Sdn Bhd. for Gamma Sdn Bhd. uses part of the codes from BI Plus but incorporates additional changes tailored to Gamma Sdn Bhd.'s needs. Apart from an invoice from Delta Sdn Bhd. to Gamma Sdn Bhd. for RM50,000 for the custom software, no other document setting up the terms of use was given to Gamma Sdn Bhd. Operating under the assumption that it owns the custom software, Gamma Sdn Bhd. now makes copies of the custom software from Delta Sdn Bhd. to all its employees and business partners.

Delta Sdn Bhd. now seeks your advice to stop Angelica from selling her IntelliPro software as well as to stop Gamma Sdn Bhd. from distributing the custom software to its business partners because this is affecting the sale of its BI Plus software.

(Total: 30 marks)

Continued...

QUESTION 5

Britannia worked as a personal secretary to one of the directors of Darwin Sdn Bhd. (“Darwin”), which is a company involved in supplying food items to supermarkets. As a personal secretary, Britannia had access to many correspondences and confidential documents, including business proposals for Darwin’s board of directors’ consideration.

Due to the prolonged COVID-19 pandemic, Darwin’s business was severely affected and many of its employees including Britannia had to be laid off. As her savings was running low, Britannia thought of starting her own business to make ends meet. She discussed this with her good friend, Cathleen, who previously worked as the marketing manager for Darwin. Eventually they settled on the idea of selling ready-to-cook Korean barbecue sets by home delivery. This idea is similar to one of the business proposals presented to Darwin’s board of directors two years ago but was not selected for implementation. Britannia was the personal secretary who prepared the documents for this business proposal.

Cathleen, from her role as a marketing manager, used her contacts for suppliers who could provide them with suitable ingredients. With some help from relatives, Britannia and Cathleen prepared, marinated and packed the ready-to-barbecue ingredients, which they sold through social media channels. Each Korean barbecue set is sold at a reasonable price and comes with a complimentary selection of kimchi. As a result, Britannia and Cathleen’s business made a tidy sum of profit.

Darwin Sdn Bhd. now claims that Britannia and Cathleen have misused its trade secrets and wants Britannia and Cathleen to stop their Korean barbecue business and hand over all profits that they have made. It is not alleged that Britannia or Cathleen had kept a copy of any document belonging to Darwin.

Advise Britannia and Cathleen.

(Total: 30 marks)

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